

## **Complaints involving highly disputed questions of facts, tortious acts or criminality cannot be adjudicated by consumer commissions established under the Consumer Protection Act, 1986**

A two-judge bench of the Supreme Court of India (“**Supreme Court**”) in its recent judgment ‘*The Chairman & Managing Director, City Union Bank Ltd & Anr v. R Chandramohan*<sup>1</sup>’ has held that complaints involving highly disputed questions of facts, tortious acts or criminality cannot be adjudicated by the consumer commissions under the Consumer Protection Act, 1986 (“**CP Act**”).

### **Brief Facts**

Mr. R. Chandramohan (“**Respondent**”), the Managing Director of ‘D-Cube Constructions (P) Ltd’ (“**Company**”) opened a current account (“**Account No. 1**”) in the name of the Company with City Union Bank Limited. The Respondent alone was permitted to operate Account No. 1. The Appellants are the Chairman (“**Appellant No. 1**”) and Manager (“**Appellant No. 2**”) (collectively the “**Appellants**”) of City Union Bank Limited.

Pursuant to the sale of 3 (three) flats in the Respondent’s projects, the purchaser of these flats issued 3 (three) demand drafts. On reconciliation of accounts, the Respondent found that 2 (two) of the demand drafts were not credited to Account No. 1 of the Company. Accordingly, the Respondent requested Appellant No. 2 to re-credit the 2 (two) demand drafts to Account No. 1. Moreover, during the correspondence which ensued between the Respondent and the Appellants, it was found that the 2 (two) demand drafts had been credited to a separate account opened by another director of the Company in the name of ‘D-Cube Construction’ (“**Account No. 2**”). The Respondent found that Account No. 2 was opened by the Appellants’ bank based on a no objection letter issued by the Company.

Accordingly, the Respondent filed a complaint before the State Commission alleging collusion on the part of the Appellants with the co-director of the Company and sought directions for re-credit of the amounts towards the 2 (two) demand drafts to Account No. 1. The State Commission allowed the complaint. Aggrieved by the State Commission’s order, the Appellants preferred an appeal before the National Commission which was dismissed by an order dated February 1, 2007 (“**Impugned Order**”).

The Appellants filed a civil appeal to challenge the Impugned Order before the Supreme Court. In support of the civil appeal, the Appellants *inter alia* contended that the State Commission and National Commission had erroneously presumed jurisdiction under the CP Act particularly when the Respondent had failed to establish any ‘deficiency in service’ under Section 2(1)(g) the CP Act. The Respondent *inter alia* contended that since the State Commission and

<sup>1</sup> Civil Appeal No. 7289 of 2009

National Commission had consistently held the Appellants liable for 'deficiency in service', the Supreme Court ought not to interfere with the Impugned Order.

## Issue

Whether consumer commissions under the CP Act can entertain complaints involving highly disputed questions of facts or allegations of tortious acts given the summary nature of proceedings?

## Findings and Analysis

The Supreme Court allowed the civil appeal and *inter alia* made the following observations:

1. The Respondent had failed to discharge its burden of proving wilful default, imperfection, or shortcoming on part of the employees of the Appellants' bank to establish the allegations of 'deficiency in service' under Section 2(1)(g) of the CP Act in terms of the decision in *Ravneet Singh Bagga v. KLM Royal Dutch Airlines and Another*<sup>2</sup>.
2. Proceedings before consumer commissions are essentially summary in nature. As such, issues which involve highly disputed factual questions, tortious acts or criminality like fraud or cheating cannot be decided by consumer commissions established under the CP Act.
3. The 'deficiency in service' under Section 2(1)(g) of the CP Act must be distinguished from criminal or tortious acts.
4. There cannot be any presumption about wilful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in service as contemplated under Section 2(1)(g) of the CP Act. The burden of proving the deficiency in service would always be upon the person alleging it.

Considering the above, the Supreme Court allowed the Civil Appeal filed by the Appellants. Accordingly, the Supreme Court dismissed the complaint filed by the Respondent and set aside the Impugned Order.

## JSA Comment

The Supreme Court has reiterated the settled position that the proceedings before consumer commissions, being summary in nature, cannot permit examination of highly disputed factual questions or cases involving tortious acts or criminality under the CP Act. In reasserting this position, the Supreme Court has explained the scope of 'deficiency in service' under Section 2(1)(g) of the CP Act and demarcated the matters which fall outside the jurisdiction of consumer commissions and those which must be left to be adjudicated by forums such as civil or criminal courts.

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<sup>2</sup> (2000) 1 SCC 66

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